

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**KERRY DEAN YAMAGATA
135 S. State College Blvd., #300
Brea, CA 92821**

**Certified Public Accountant
Certificate No. 35635**

Respondent.

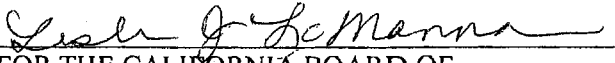
Case No. AC-2012-20

OAH No. 2012090815

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on APRIL 28, 2013.
It is so ORDERED MARCH 29, 2013.


FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1. KAMALA D. HARRIS
Attorney General of California
2. JAMES M. LEDAKIS
Supervising Deputy Attorney General
3. CARL W. SONNE
Deputy Attorney General
4. State Bar No. 116253
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Attorneys for Complainant

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9. **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10. **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11. In the Matter of the Accusation Against:

12. **KERRY DEAN YAMAGATA**
13. **135 S. State College Blvd., #300**
14. **Brea, CA 92821**

15. **Certified Public Accountant**
Certificate No. 35635

16. Respondent.

Case No. AC-2012-20

OAH No. 2012090815

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17.
18.
19. IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20. entitled proceedings that the following matters are true:

21. **PARTIES**

22. 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
23. Accountancy. She brought this action solely in her official capacity and is represented in this
24. matter by Kamala D. Harris, Attorney General of the State of California, by Carl W. Sonne,
25. Deputy Attorney General.

26. 2. Respondent Kerry Dean Yamagata (Respondent) is represented in this proceeding by
27. attorney Pamela S. Palmer, whose address is: Latham & Watkins LLP, 355 South Grand Avenue,
28. Los Angeles, CA 90071-1560.

3. On or about July 30, 1982, the California Board of Accountancy issued Certified Public Accountant Certificate No. 35635 to Kerry Dean Yamagata (Respondent). The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2012-20 and will expire on June 30, 2013, unless renewed.

JURISDICTION

4. Accusation No. AC-2012-20 was filed before the California Board of Accountancy (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 1, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. AC-2012-20 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. AC-2012-20. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. AC-2012-20.

10. Respondent agrees that his Certified Public Accountant Certificate is subject to discipline and he agrees to be bound by the CBA's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the California Board of Accountancy or other professional licensing agency is involved, and shall not be admissible in any other proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the California Board of Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the CBA regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the CBA shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that electronic or facsimile copies of this Stipulated Settlement and Disciplinary Order, including electronic or facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 35635 issued to Respondent Kerry Dean Yamagata (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. Suspension

Certified Public Accountant Certificate No. 35635 issued to respondent Kerry Dean Yamagata is suspended for a period of four (4) months. During the period of suspension the respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. Obey All Laws

Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. Cost Reimbursement

Respondent shall reimburse the CBA the sum of \$6,239.67 for its investigation and prosecution costs. The payment shall be made within 180 days of the Effective Date the CBA's decision.

4. Submit Written Reports

Respondent shall submit, within 10 days of completion of the quarter, written reports to the CBA on a form obtained from the CBA. The respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the CBA or its representatives.

1 **5. Personal Appearances**

2 Respondent shall, during the period of probation, appear in person at interviews/meetings as
3 directed by the CBA or its designated representatives, provided such notification is accomplished
4 in a timely manner.

5 **6. Comply With Probation**

6 Respondent shall fully comply with the terms and conditions of the probation imposed by
7 the CBA and shall cooperate fully with representatives of the California Board of Accountancy in
8 its monitoring and investigation of the respondent's compliance with probation terms and
9 conditions.

10 **7. Practice Investigation**

11 Respondent shall be subject to, and shall permit, a practice investigation of the respondent's
12 professional practice. Such a practice investigation shall be conducted by representatives of the
13 CBA, provided notification of such review is accomplished in a timely manner.

14 **8. Comply With Citations**

15 Respondent shall comply with all final orders resulting from citations issued by the
16 California Board of Accountancy.

17 **9. Tolling of Probation for Out-of-State Residence/Practice**

18 In the event respondent should leave California to reside or practice outside this state,
19 respondent must notify the CBA in writing of the dates of departure and return. Periods of non-
20 California residency or practice outside the state shall not apply to reduction of the probationary
21 period, or of any suspension. No obligation imposed herein, including requirements to file
22 written reports, reimburse the CBA costs, or make restitution to consumers, shall be suspended or
23 otherwise affected by such periods of out-of-state residency or practice except at the written
24 direction of the CBA.

25 **10. Violation of Probation**

26 If respondent violates probation in any respect, the CBA, after giving respondent notice and
27 an opportunity to be heard, may revoke probation and carry out the disciplinary order that was
28 stayed. If an accusation or a petition to revoke probation is filed against respondent during

1 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
2 probation shall be extended until the matter is final.

3 The CBA's Executive Officer may issue a citation under California Code of Regulations,
4 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
5 licensee on probation.

6 **11. Completion of Probation**

7 Upon successful completion of probation, respondent's license will be fully restored.

8 **12. Active License Status**

9 Respondent shall at all times maintain an active license status with the CBA, including
10 during any period of suspension. If the license is expired at the time the CBA's decision becomes
11 effective, the license must be renewed within 30 days of the effective date of the decision.

12 **13. Compliance with SEC Order**

13 Respondent shall at all times comply with any final order issued by the Securities and
14 Exchange Commissions pertaining to him, including that order described in paragraph 7 of the
15 Accusation attached hereto as Exhibit A.

16 ACCEPTANCE

17 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
18 discussed it with my attorney, Pamela S. Palmer. I understand the stipulation and the effect it will
19 have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and
20 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
21 Decision and Order of the California Board of Accountancy.

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23 DATED: 2/20/2013

Kerry Dean Yamagata
KERRY DEAN YAMAGATA
Respondent

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25 ///

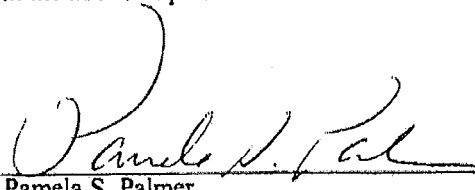
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1 I have read and fully discussed with Respondent Kerry Dean Yamagata the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED: 2/20/13


Pamela S. Palmer
Attorney for Respondent


7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the California Board of Accountancy of the Department of
10 Consumer Affairs.

11 Dated: February 22, 2013

Respectfully submitted,

13 KAMALA D. HARRIS
Attorney General of California
14 JAMES M. LEDAKIS
Supervising Deputy Attorney General

15 
16 CARL W. SONNE
17 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. AC-2012-20

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 CARL W. SONNE
Deputy Attorney General
4 State Bar No. 116253
110 West "A" Street, Suite 1100
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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135 S. State College Blvd., #300
14 Brea, CA 92821

15 **Certified Public Accountant**
Certificate No. 35635

Case No. AC-2012-20

A C C U S A T I O N

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the California Board of Accountancy, Department of Consumer
21 Affairs.

22 2. On or about July 30, 1982, the California Board of Accountancy (CBA) issued
23 Certified Public Accountant Certificate Number 35635 to Kerry Dean Yamagata (Respondent).
24 The Certified Public Accountant Certificate was in full force and effect at all times relevant to the
25 charges brought herein and will expire on June 30, 2013, unless renewed.
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JURISDICTION

3. This Accusation is brought before the CBA, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 5100 states:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

....
(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(h) Suspension or revocation of the right to practice before any governmental body or agency.

....
(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

....
5. Section 5107(a) of the Code states:

The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

6. Section 5109 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

FIRST CAUSE FOR DISCIPLINE

(Discipline by SEC)

7. Respondent is subject to disciplinary action under Code section 5100 subsection (l) in that on or about December 20, 2010, in Securities and Exchange Commission Release No. 9166, Securities and Exchange Commission Release No. 63579, Accounting and Auditing Enforcement Release No. 3221, and Administrative Proceeding File No. 3-14167, the United States Securities and Exchange Commission (SEC) suspended Respondent's right to appear or practice before that body. The circumstances leading to Respondent's suspension are as follows:

a. On or about December 20, 2010, the SEC filed a cease and desist order against Respondent in its "Order Instituting Public Administrative Cease-And-Desist Proceedings Pursuant to Section 8a of the Securities Act of 1933 and Section 4c of the Securities Act of 1934 and Rule 102 (e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order" (SEC Order) against Moore Stephens Wurth Frazer & Torbet LLP and Respondent. The SEC Order enjoined Respondent from committing any violations of Rules 2-02(b) and 2-06 under Regulation S-X (17 C.F.R. §§ 210.2-02(b) and 210.2-06). The SEC Order found Respondent jointly and severally liable for disgorgement of audit fees of \$100,000, and prejudgment interest in the amount of \$29,500. Respondent was further denied the privilege of appearing or practicing before the Commission as an accountant.

b. The SEC Order arose from Respondent's improper professional conduct in connection with annual audits and quarterly reviews of financial statements in 2004 and 2005 of China Energy Savings Technology, Inc. (China Energy), Respondent's client, and Respondent's violation of the document retention requirements of Regulation S-X. China Energy materially overstated its Earnings Per Share (EPS) in its fiscal year (FY) 2004 annual report. Respondent's client also materially overstated its revenues and net income in its FY 2005 annual report and two quarterly reports. Respondent failed to

1 conduct the relevant audits and reviews in accordance with the standards and
2 rules of the Public Company Accounting Oversight Board (PCAOB). Although
3 Respondent determined that the client engagement involved high risks,
4 Respondent did not exercise professional skepticism and due professional care,
5 and Respondent otherwise violated professional standards. Respondent issued
6 unqualified audit opinions, which were included in the client's FY 2004 and
7 2005 annual reports. Respondent also issued interim review reports which
8 contained no reservations, before client filed its quarterly reports in FY 2005.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Discipline by Government Agency)**

11 8. Respondent is subject to disciplinary action under Code section 5100 subsection (h)
12 in that on or about December 20, 2010 a government body or agency suspended Respondent's
13 right to practice before the government body or agency. The circumstances are described in
14 paragraph 7, above.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the California Board of Accountancy issue a decision:

- 18 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
19 Accountant Certificate Number 35635, issued to Kerry Dean Yamagata;
20 2. Ordering Kerry Dean Yamagata to pay the California Board of Accountancy the
21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
22 Professions Code section 5107; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: Feb. 1, 2012

Deanne Pearce for

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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